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EDWARD BENNETT WILLIAMS (1920-1988)  
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September 26, 2002

VIA FACSIMILE & U.S. MAIL

The Honorable Joseph L. Dunn  
Chair, Select Committee to Investigate  
the Wholesale Electricity Market  
1020 N Street, Room 258  
Sacramento, CA 95814

**Re: CPUC Report**

Dear Senator Dunn:

We write on behalf of AES Redondo Beach, L.L.C.; AES Alamitos, L.L.C.; and AES Huntington Beach, L.L.C. (collectively, the "AES entities"), in response to your letter of September 19, 2002. The AES entities own and operate the three generating facilities in Southern California known as Redondo Beach, Alamitos, and Huntington Beach, and referred to in the CPUC report released on September 17, 2002. Your letter requests a written response to certain "findings" made by the CPUC in its report.

At the outset, we need to correct fundamental errors in the CPUC report concerning the relationship between the AES entities and Williams Energy Marketing & Trading Company ("Williams").

First, the AES entities own and operate the generating facilities at Redondo Beach, Alamitos, and Huntington Beach. The AES entities and Williams are separate, independent, and distinct companies. Accordingly, it is a mistake to refer to the plants as "AES/Williams" plants or to suggest that there is some form of common ownership.

Second, the AES entities play no role whatsoever in bidding or selling electricity into the California Wholesale Electricity Market. Indeed, the AES entities never have engaged in such bidding or selling. The AES entities sold all the capacity from the Redondo Beach, Alamitos, and

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Huntington Beach generating facilities to Williams pursuant to a Capacity Sale and Tolling Agreement dated May 15, 1998 ("Tolling Agreement"). The Tolling Agreement was filed with FERC on June 15, 1998.

The Tolling Agreement sets forth the terms by which the AES entities are paid for the sale of that capacity to Williams. In short, the AES entities receive contract-based payments from Williams in exchange for making the units available for dispatch by Williams. The contract-based compensation is not affected by the market price for electricity. The AES entities simply generate electricity from available units in response to dispatch instructions from Williams. The AES entities play no role in the bidding or marketing process for the electricity.

For those reasons, it also is a mistake to lump together the AES entities and Williams as "Williams/AES" when discussing (i) the dispatch and generation of available electricity, and (ii) the bidding of available electricity. Accordingly, the AES entities are not in a position to give "specific" or "explicit" comments about the generation or non-generation of available power, or bidding practices relating to available power.

The AES entities object to the CPUC's report as it relates to plant outages. The CPUC states that its "investigation of reported outages remains ongoing and is not the subject of this report." Report at 2 (emphasis added). The CPUC purports to give generators the "benefit of the doubt" by "accepting generator claims of plant outages and mechanical problems at face value." Report at 2. Notwithstanding those assurances, the CPUC then devotes several pages of discussion to "plant outages." The CPUC infers that the AES entities had a motivation to manipulate the electricity market.

The AES entities object to any suggestion that their outages were motivated by anything other than their legitimate interests and sound operating practices. It is difficult, if not impossible, to respond more specifically because the CPUC report does not identify any specific outages that it deems improper. The AES entities have cooperated extensively with the CPUC. They have produced thousands of documents and have allowed CPUC investigators to inspect the plants and personally verify the nature and causes of plant unavailability. Thus, it is surprising that the CPUC would draw negative inferences without providing any evidence in support.

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On a more general note, the CPUC report fails to take proper account of the legal restrictions caused by air quality requirements and associated enforcement actions in Southern California. For example, the CPUC concludes that Williams/AES declared out of service 2,970 megawatts (75%) of its capacity during Hour 19 on December 7, 2000. That conclusion is misleading.

On November 15, 2000, the South Coast Air Quality Management District ("SCAQMD") filed a Petition for Order for Abatement, alleging that the AES entities lacked sufficient RECLAIM Trading Credits to ensure compliance with applicable environmental laws for the year 2000. In response to this Petition, the AES entities declared 3 units (855 MWs) unavailable. In addition, the AES entities declared another unit (133 MWs) unavailable because it had already used up the allotted number of hours in its environmental permit. Thus, on December 7, 2000, 988 MWs were declared unavailable because the AES entities determined that they could no longer operate certain units in compliance with the terms of the RECLAIM trading program and their permits to operate.<sup>1</sup>

Without these environmental legal restrictions, an additional 988 MWs would have been available on December 7, 2000. Moreover, the CPUC's selection of Hour 19 as the benchmark further skews the data. That is because Redondo Beach #7 – a 480 MWs unit – tripped at 14:55 hours. The unit had been available and had been running until it was forced out of service. Thus, if the 480 MWs from Redondo Beach #7 are addressed fairly, and the environmental restrictions are properly accounted for, the 75% "out of service" number drops to 39% (1,528 MWs out of service/3,956 MWs capacity = 39%). The remaining 39% was out of service for legitimate reasons. See, e.g., attached photograph of Alamitos #1 (showing a hole blown through the wall as a result of a catastrophic failure of its boiler tubes).<sup>2</sup>

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<sup>1</sup> But for the environmental restrictions, those 988 MWs also would have been available on December 4, 5, and 6, 2000.

<sup>2</sup> The maximum generating capacity of the Redondo Beach, Alamitos, and Huntington Beach plants from November 30, 2000 through May 2001 was 3,956 MWs, not 3,970 MWs as reported by the CPUC.

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In summary, the CPUC report is not applicable to the AES entities because they did not engage in bidding or dispatching available power. Additionally, the AES entities deny that any outages were unwarranted or improper. They object to the CPUC's unsupported inferences to the contrary. During 2000 and 2001 the AES entities ran their units at service factors far exceeding levels experienced at any time in the past 20 years. At all times they operated the plants according to prudent and sound practices.

Sincerely,

A handwritten signature in cursive script that reads "Stephen D. Raber /dm".

Stephen D. Raber

*Counsel for the AES entities*

Enclosure

